IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELANIA FELIX DE ASENCIO, MANUEL A. GUTIERREZ, ASELA RUIZ, EUSEBIA RUIZ, LUIS A. VIGO, LUZ CORDOVA and HECTOR PANTAJOS, on behalf of themselves and all other similarly situated individuals,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	NO. 00-CV-4294
TYSON FOODS, INC.,	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. SEPTEMBER 9, 2002

Presently before this Court is the Defendant Tyson Foods Inc.'s ("Tyson") Motion for Summary Judgment on the Plaintiffs' FLSA Overtime Claim. For the reasons that follow, the Motion will be Granted in part and Denied in part.[1] Because the parties are well aware of the facts of this case, a short recitation should suffice. The Plaintiffs in this action are production employees in Tyson's New Holland, Pennsylvania poultry processing facility. The Plaintiffs allege that Tyson has failed to pay them their minimum hourly pay rate for all hours of work performed up to forty hours per week, and has failed to pay them overtime for hours worked in excess of forty hours per week as required by the Fair Labor Standards Act ("FLSA"), 29 U.S.C.

[1] Summary judgment is Granted in favor of Tyson only on the Plaintiffs' FLSA claim related to the time spent by the employees cleaning out their lockers each month, as the Plaintiffs do not dispute Tyson's arguments on this claim. Furthermore, the undisputed evidence shows that this activity takes only a couple of minutes each month to perform. Therefore, it is *de minimus* and thus not compensable. See Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946).

§ 201, *et. seq.* and the Pennsylvania Wage Payment and Collection Law ("WPCL"), 42 P.S. § 260.1, *et seq*. Specifically, the Plaintiffs allege that Tyson does not pay them for donning, doffing and sanitizing protective clothing and equipment before and after their shifts and breaks. The current Motion for Summary Judgment was filed on June 11, 2002.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Summary Judgment is only appropriate if the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

Tyson presents three arguments in support of its Motion. First, Tyson argues that the acts of donning, doffing, and sanitizing protective clothing and equipment are not work as defined by the FLSA. Second, Tyson argues that if such activities are work, then they are *de minimus* and thus should not be compensated. Third, Tyson alleges that pre-shift and post-shift donning, doffing, and sanitizing are not compensable under the Portal to Portal Act, 29 U.S.C. § 251, *et seq.* ("the Portal to Portal Act"). For each of these three issues, there is minimal relevant case law in our jurisdiction. Furthermore, there is significant disagreement among the jurisdictions who have considered these issues. We find that there are genuine issues of material fact entwined with each of these arguments that precludes the entry of summary judgment. All three of these issues would benefit from a full trial before a final decision is reached. We do not wish to be hasty and rule on these mixed issues of law and fact without a full record. We believe such a decision would be a mistake and a disservice to the body of law on which we depend.

First, Tyson argues that the acts of the donning, doffing, and sanitizing protective clothing and equipment are not work under the FLSA. Work is defined as "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." Tennessee Coal, Iron & Railroad Co v. Muscodo Local No. 123, 321 U.S. 590, 598 (1944). After viewing the facts in the light most favorable to the Plaintiffs, this Court finds that genuine issues of material fact remain regarding the level of physical or mental exertion required for donning, doffing and sanitizing the protective clothing and equipment, and whether these acts are primarily for Tyson's benefit. Therefore, summary judgment on this issue would be premature and inappropriate.

Second, Tyson argues that if these activities are work, then they are *de minimus* and thus not compensable. See Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946). There are great disparities in the testimony and evidence regarding how much time the Plaintiffs spend donning, doffing and sanitizing protective clothing and equipment during the day. The genuine issues concerning this material fact must be resolved at trial.

Third, Tyson argues that the donning, doffing and sanitizing of protective clothing and equipment before and after "line time" are not compensable acts under the Portal to Portal Act. The Portal to Portal Act bars compensation for preliminary and postliminary activities which are performed before the employee begins his or her principal activity at the beginning of the workday and after such activity has ceased at the end of the workday. 29 U.S.C. § 254(a)(2). Tyson alleges that the donning, doffing, and sanitizing of protective clothing and equipment falls within this non-compensable category. However, such activities are considered part of the

principal activity if the donning, doffing and sanitizing are "integral and indispensable part[s] of the principal activit[y]." Steiner v. Mitchell, 350 U.S. 247, 256 (1956). Here, viewing the facts in the light most favorable to the Plaintiffs, genuine issues of material fact remain regarding whether the donning, doffing, and sanitizing are sufficiently integral and indispensable to the Plaintiffs' principal activities so that they are compensable under the Portal to Portal Act.

In view of the many disputed factual issues intertwined with the legal issues concerning these three arguments, summary judgment is not appropriate and would be premature at this time.

An appropriate Order follows.

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Plaintiffs,	:	
v.	:	NO. 00-CV-4294
TYSON FOODS, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this 9th day of September, 2002, upon consideration of the Defendant's Motion for Summary Judgment on Plaintiffs' FLSA Overtime Claim (Dkt. No. 93), and any Responses and Replies thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. Summary Judgment is GRANTED in favor of the Defendant on the Plaintiffs' FLSA claim related to the time spent by the employees' cleaning out their lockers. The remainder of the Motion is DENIED.

BY THE COURT:

ROBERT F. KELLY, Sr. J.